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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**OUTERBRIDGE ACCESS
ASSOCIATION, SUING ON BEHALF
OF DIANE CROSS; and DIANE
CROSS, An Individual,**

Plaintiffs,

v.

**ROSS DRESS FOR LESS, INC.
d.b.a. ROSS DRESS FOR LESS
#478; MANNA DEVELOPMENT
GROUP, LLC d.b.a. PANERA
BREAD #4279; MIRA MESA
MARKETPLACE EAST, LLC; AND
DOES 1 THROUGH 10, Inclusive,**

Defendants.

Case No.: '08 CV 0045 BTM CAB

COMPLAINT

CLASS ACTION

**DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS**

**[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1,
54.3]**

DEMAND FOR JURY TRIAL

[F.R.Civ.P. rule 38(b)]

INTRODUCTION

1. Plaintiffs OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF DIANE CROSS AND ITS MEMBERS; and DIANE CROSS, An Individual, herein complain, by filing this Civil Complaint in accordance with rule 8 of the Federal Rules of Civil Procedure in the Judicial

1 District of the United States District Court of the Southern
2 District of California, that Defendants have in the past, and
3 presently are, engaging in discriminatory practices against
4 individuals with disabilities, specifically including minorities
5 with disabilities. Plaintiffs allege this civil action and others
6 substantial similar thereto are necessary to compel access
7 compliance because empirical research on the effectiveness of
8 Title III of the Americans with Disabilities Act indicates this
9 Title has failed to achieve full and equal access simply by the
10 executive branch of the Federal Government funding and promoting
11 voluntary compliance efforts. Further, empirical research shows
12 when individuals with disabilities give actual notice of potential
13 access problems to places of public accommodation without a
14 federal civil rights action, the public accommodations do not
15 remove the access barriers. Therefore, Plaintiffs make the
16 following allegations in this federal civil rights action:

17 JURISDICTION AND VENUE

18 2. The federal jurisdiction of this action is based on the
19 Americans with Disabilities Act, 42 United States Code 12101-
20 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
21 District of the United States District Court of the Southern
22 District of California is in accordance with 28 U.S.C. § 1391(b)
23 because a substantial part of Plaintiffs' claims arose within the
24 Judicial District of the United States District Court of the
25 Southern District of California.

26 SUPPLEMENTAL JURISDICTION

27 3. The Judicial District of the United States District Court of
28

1 the Southern District of California has supplemental jurisdiction
2 over the state claims as alleged in this Complaint pursuant to 28
3 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper
4 in this action is because all the causes of action or claims
5 derived from federal law and those arising under state law, as
6 herein alleged, arose from common nucleus of operative facts. The
7 common nucleus of operative facts, include, but are not limited
8 to, the incidents where Plaintiffs were denied full and equal
9 access to Defendants' facilities, goods, and/or services in
10 violation of both federal and state laws when they attempted to
11 enter, use, and/or exit Defendants' facilities as described below
12 within this Complaint. Further, due to this denial of full and
13 equal access, OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF
14 DIANE CROSS and DIANE CROSS, An Individual, and other persons with
15 disabilities were injured. Based upon the said allegations, the
16 state actions, as stated herein, are so related to the federal
17 actions that they form part of the same case or controversy and
18 one would ordinarily expect the actions to be tried in one
19 judicial proceeding.

20 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

21 4. Plaintiff is informed and believes and thereon alleges that
22 Defendant ROSS DRESS FOR LESS, INC. the owner, operator,
23 franchiser, licensor, and/or is doing business as ROSS DRESS FOR
24 LESS #478. Defendant ROSS DRESS FOR LESS, INC. d.b.a. ROSS DRESS
25 FOR LESS #478 is located at 10643 Westview Parkway, Mira Mesa,
26 California 92126, Assessor Parcel Number: 318-600-10. Plaintiff is
27 informed and believes and thereon alleges that Defendant MANNA
28

1 DEVELOPMENT GROUP, LLC is the owner, operator, franchiser,
2 licensor, and/or is doing business as PANERA BREAD #4279.
3 Defendant MANNA DEVELOPMENT GROUP, LLC d.b.a. PANERA BREAD #4279
4 is located at 10751 Westview Parkway, Mira Mesa, California 92126,
5 Assessor Parcel Number: 318-600-15. Plaintiff is informed and
6 believes and thereon alleges that Defendant MIRA MESA MARKETPLACE
7 EAST, LLC is the owner, operator, and/or lessor of the real
8 property located at 10643-10655 Westview Parkway, Mira Mesa,
9 California 92126, Assessor Parcel Number: 318-600-10 and 10749-
10 10765 Westview Parkway, Mira Mesa, California 92126, Assessor
11 Parcel Number: 318-600-15. Defendant MIRA MESA MARKETPLACE EAST,
12 LLC is located at 101 North Westlake Blvd., #201, Westlake
13 Village, California 91362.

14 5. The words Plaintiff, Plaintiffs, Plaintiff's Member, and
15 Plaintiff's Members as used herein specifically include
16 OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF DIANE CROSS and
17 DIANE CROSS, An Individual.

18 6. Defendants Does 1 through 10, were at all times relevant
19 herein subsidiaries, employers, employees, agents, of ROSS DRESS
20 FOR LESS, INC. d.b.a. ROSS DRESS FOR LESS #478; MANNA DEVELOPMENT
21 GROUP, LLC d.b.a. PANERA BREAD #4279; and MIRA MESA MARKETPLACE
22 EAST, LLC. Plaintiffs are ignorant of the true names and
23 capacities of Defendants sued herein as Does 1 through 10,
24 inclusive, and therefore sue these Defendants by such fictitious
25 names. Plaintiffs will pray leave of the court to amend this
26 complaint to allege the true names and capacities of the Does when
27 ascertained.
28

1 7. Plaintiffs are informed and believe, and thereon allege, that
2 Defendants and each of them herein were, at all times relevant to
3 the action, the owner, lessor, lessee, franchiser, franchisee,
4 general partner, limited partner, agent, employee, representing
5 partner, or joint venturer of the remaining Defendants and were
6 acting within the course and scope of that relationship.

7 Plaintiffs are further informed and believe, and thereon allege,
8 that each of the Defendants herein gave consent to, ratified,
9 and/or authorized the acts alleged herein to each of the remaining
10 Defendants.

11 **STATEWIDE CLASS ACTION ALLEGATIONS UNDER FED.R.CIV.P. 23(b) AS TO**
12 **ALL DEFENDANTS**

13 8. Plaintiffs are members of a group within the State of
14 California composed of persons with a wide range of disabilities,
15 limited to persons who use wheelchairs for mobility, who must be
16 able to access retail merchandise establishments, like Defendants'
17 establishments located at 10643-10655 Westview Parkway, Mira Mesa,
18 California 92126, Assessor Parcel Number: 318-600-10 and 10749-
19 10765 Westview Parkway, Mira Mesa, California 92126, Assessor
20 Parcel Number: 318-600-15. Plaintiffs are precluded from equal
21 access to Defendants' establishments so meaningfully because the
22 establishments, and each of them, fail to provide access for
23 members of the disability community who use a wheelchair for
24 mobility to the interior path of travel, pick-up counter,
25 condiment counter, and seating within the facility. The Supreme
26 Court of the United States has held as long as the class
27 representative provides adequate representation for the class'

1 interests, the court has the power to adjudicate the rights and
2 obligations of all class members - even those who would otherwise
3 be beyond the reach of its personal jurisdiction. Phillips
4 Petroleum Co. v. Shutts, 472 US 797 (1985). This case stands for
5 the proposition that minimum contacts are not required with
6 nonresident members of a plaintiff class because, "the burdens
7 placed by a State upon absent class action plaintiff are not of
8 the same order or magnitude as those it places on an absent
9 defendant." Id. Plaintiffs allege they will insure class members
10 shall receive adequate notice of the proceedings and the
11 opportunity to "opt out," if required

12 9. Defendants have conducted themselves such as to establish a
13 pattern and practice of architectural discrimination. Plaintiffs
14 allege that Defendants have control over each and every facility,
15 establishment, and/or business located within the property located
16 at 10643-10655 Westview Parkway, Mira Mesa, California 92126,
17 Assessor Parcel Number: 318-600-10 and 10749-10765 Westview
18 Parkway, Mira Mesa, California 92126, Assessor Parcel Number: 318-
19 600-15. Accordingly, Plaintiffs allege Defendants are responsible
20 for removing architectural barriers at Defendants' facilities and
21 the establishments/businesses contained therein.

22 10. For the aforementioned reasons, Plaintiffs allege they are
23 proper class representatives for members of the disability
24 community who use a wheelchair for mobility because the members of
25 the disability community who use a wheelchair for mobility are so
26 numerous that joinder is impracticable due to the fact more than
27 one hundred (100) persons fall within the membership description.
28

1 Also, the questions of law or fact are so common because the
2 members of the disability community who use a wheelchair for
3 mobility are being denied their civil rights under federal and
4 state laws - that is, each member of the disability community who
5 use a wheelchair for mobility suffered substantially similar
6 violations relating to the interior path of travel, pick-up
7 counter, condiment counter, and seating within the facility.
8 Further, the claims or defenses of the representative parties are
9 typical - Plaintiffs have the right to access facilities,
10 establishments, and businesses like those within the property
11 located at 10643-10655 Westview Parkway, Mira Mesa, California
12 92126, Assessor Parcel Number: 318-600-10 and 10749-10765 Westview
13 Parkway, Mira Mesa, California 92126, Assessor Parcel Number: 318-
14 600-15, and the businesses that are located thereon for many
15 reasons including without limitation the purchase of retail
16 merchandise. Defendants' facilities are open to the general
17 public and Plaintiffs have been denied access because of
18 violations, as outlined above and specifically addressed elsewhere
19 within this Civil Complaint.

20 11. Additionally, Plaintiffs, as the named representatives, will
21 fairly and adequately represent the interests of the class because
22 Plaintiffs and the members of the disability community in the
23 State of California who use a wheelchair for mobility have
24 suffered substantially similar violations. Finally, a pattern and
25 practice exists on the part of Defendants, and each of them, of
26 architectural discrimination at their public facilities located
27 within the State of California. On information and good faith
28

1 belief, Plaintiffs thereon allege that Defendants, prior to the
2 passing of the Americans With Disabilities Act in 1992, conceived,
3 commissioned, designed, and implemented among other things, a
4 design for their public facilities, including, but not limited to
5 the interior path of travel, pick-up counter, condiment counter,
6 and seating within the facility which do not meet the minimal
7 standards outlined under the federal regulations known as the
8 Americans With Disabilities Act Accessibility Guidelines ("ADAAG")
9 and state regulations, also known as Title 24 of the California
10 Building Code, and to which non-compliant plan they continue to
11 utilize to the injury of the members of the class. For these
12 reasons and the facts as stated herein, Plaintiffs have the right
13 to maintain this statewide class action pursuant to Fed.R.Civ.P.
14 Rule 23(b).

15 **CONCISE SET OF FACTS**

16 12. Plaintiff OUTERBRIDGE ACCESS ASSOCIATION is an organization
17 that advocates on the behalf of its members with disabilities when
18 their civil rights and liberties have been violated. Plaintiff's
19 member DIANE CROSS is a member of Plaintiff Organization and has
20 physical impairments and due to these physical impairments she has
21 learned to successfully operate a wheelchair. Further,
22 Plaintiff's Member and Plaintiff DIANE CROSS' said physical
23 impairments substantially limits one or more of the following
24 major life activities including but not limited to: walking.

25 13. On January 26, 2007, Plaintiff CROSS went to Defendants'
26 public accommodation facilities known as ROSS DRESS FOR LESS, INC.
27 d.b.a. ROSS DRESS FOR LESS #478; MANNA DEVELOPMENT GROUP, LLC
28

1 d.b.a. PANERA BREAD #4279; MIRA MESA MARKETPLACE EAST, LLC,
2 located at 10643-10655 Westview Parkway, Mira Mesa, California
3 92126, Assessor Parcel Number: 318-600-10 and 10749-10765 Westview
4 Parkway, Mira Mesa, California 92126, Assessor Parcel Number: 318-
5 600-15, to utilize their goods and/or services accompanied by a
6 friend.

7 14. When Plaintiff CROSS patronized Defendants' ROSS DRESS FOR
8 LESS, INC. d.b.a. ROSS DRESS FOR LESS #478 (hereinafter "ROSS
9 DRESS FOR LESS #478"), facilities, she was unable to use and/or
10 had difficulty using the public accommodations' facilities
11 including but not limited to the interior path of travel as said
12 were not accessible because they failed to comply with ADA Access
13 Guidelines For Buildings and Facilities (hereafter referred to as
14 "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or
15 California's Title 24 Building Code Requirements. Defendants
16 failed to remove barriers to equal access within their public
17 accommodation facilities known as the ROSS DRESS FOR LESS #478.

18 15. Plaintiff CROSS personally experienced difficulty with said
19 access barriers at ROSS DRESS FOR LESS #478. The following
20 examples of known barriers to access are not an exhaustive list of
21 the barriers to access that exist at Defendants' facilities. For
22 example, the interior path of travel within the home goods and
23 linens departments fail to be accessible, as merchandise is
24 stacked and scattered within and around the aisles impermissibly
25 narrows the paths. The shoe department fails to be accessible, as
26 shoes are scattered within and around the aisles and impermissibly
27 narrows the paths. The luggage department failed to be accessible,
28

1 as the merchandise is stacked and scattered within and around the
2 aisles impermissibly narrows the paths. The children's toy
3 department failed to be accessible, as the merchandise is stacked
4 and scattered within and around the aisles impermissibly narrows
5 the paths. The emergency exit door located near the children's toy
6 department was impermissibly blocked due to merchandise blocking
7 the door.

8 16. When Plaintiff CROSS patronized Defendants' facilities MANNA
9 DEVELOPMENT GROUP, LLC d.b.a. PANERA BREAD #4279, (hereinafter
10 "PANERA BREAD #4279"), she was unable to use and/or had difficulty
11 using the public accommodations' facilities including but not
12 limited to the pick-up counter, condiment counter, and seating as
13 said were not accessible because they failed to comply with ADA
14 Access Guidelines For Buildings and Facilities (hereafter referred
15 to as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or
16 California's Title 24 Building Code Requirements. Defendants
17 failed to remove barriers to equal access within their public
18 accommodation facilities known as the PANERA BREAD #4279.

19 17. Plaintiff CROSS personally experienced difficulty with said
20 access barriers at PANERA BREAD #4279. The following examples of
21 known barriers to access are not an exhaustive list of the
22 barriers to access that exist at Defendants' facilities. For
23 example, the pick-up counter fails to be compliant, as it is too
24 high to be accessible. The condiment counter failed to be
25 accessible, as some of the condiments are located too far out of
26 reach.

27 18. There fails to be any designated accessible seating within
28

1 PANERA BREAD #4279.

2 19. Plaintiffs can prove these barriers as Plaintiffs conducted a
3 preliminary survey of Defendants' facilities. Plaintiff
4 Association alleges that its visually and hearing impaired members
5 desire to go to Defendants' facility but cannot because of lack of
6 auxiliary aids. Plaintiffs specifically allege that Defendants
7 knew, to a substantial certainty, that the architectural barriers
8 precluded wheelchair access. First, Plaintiffs will prove that
9 Defendants had actual knowledge that the architectural barriers
10 precluded wheelchair access and that the noncompliance with ADAAG
11 as to accessible entrances was intentional. Second, due to the
12 abundance of ADA information and constant news covers of ADA
13 lawsuits, Defendants had actual knowledge of the ADA and decided
14 deliberately not to remove architectural barriers. Third,
15 Defendants have no plans to remodel. Fourth, Defendants had
16 actual knowledge of ADA given all the ADA public awareness
17 campaigns, the abundance of free ADA information and the media's
18 constant ADA coverage. Fifth, a human being acting for the
19 defendants made a conscious decision as to how to proceed given
20 the presence of the architectural barriers. Plaintiffs allege
21 any alternative methods preclude integration of wheelchair
22 patrons, as it requires them to use a second-class entrance.
23 Also, expert testimony will show the facility contained
24 inaccessible features. Plaintiffs allege businesses often state
25 that they have few customers with disabilities. Plaintiffs allege
26 such customers avoid patronizing inaccessible business and are
27 deterred from patronizing such businesses.
28

20. Plaintiff's Member and Plaintiff DIANE CROSS intends to return to Defendants' public accommodation facilities in the immediate future. Plaintiffs' Member and Plaintiff DIANE CROSS is presently deterred from returning due to her knowledge of the barriers to access that exist at Defendants' facilities.

21. Pursuant to federal and state law, Defendants are required to remove barriers to their existing facilities. Further, Defendants had actual knowledge of their barrier removal duties under the Americans with Disabilities Act and the Civil Code before January 26, 1992. Also, Defendants should have known that individuals with disabilities are not required to give notice to a governmental agency before filing suit alleging Defendants failed to remove architectural barriers.

22. Based on these facts, Plaintiffs allege they were discriminated against each time they patronized Defendants' facilities. Plaintiff's Member and Plaintiff DIANE CROSS was extremely upset due to Defendants' conduct.

NOTICE

23. Plaintiffs are not required to provide notice to the defendants prior to filing a complaint. Skaff v Meridien N. Am. Beverly Hills, LLC, 506 F.3d 832 (9th Cir. 2007), see also Botosan v. Paul McNally Realty, 216 F.3d 827, 832 (9th Cir 2000).

WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

24. ROSS DRESS FOR LESS, INC. d.b.a. ROSS DRESS FOR LESS #478; MANNA DEVELOPMENT GROUP, LLC d.b.a. PANERA BREAD #4279; MIRA MESA MARKETPLACE EAST, LLC; and Does 1 through 10 will be referred to

collectively hereinafter as "Defendants."

25. Plaintiffs aver that the Defendants are liable for the following claims as alleged below:

DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- **Claims Under The Americans With Disabilities Act Of 1990**

CLAIM I AGAINST ALL DEFENDANTS: **Denial Of Full And Equal Access**

26. Based on the facts plead at ¶¶ 12 - 22 above and elsewhere in this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations. Plaintiffs allege Defendants are a public accommodation owned, leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff's Member and Plaintiff DIANE CROSS was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and Plaintiff DIANE CROSS was denied equal access to Defendants' existing facilities.

27. Plaintiff's Member and Plaintiff DIANE CROSS has physical impairments as alleged in ¶ 12 above because her conditions affect one or more of the following body systems: neurological, musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's Member and Plaintiff DIANE CROSS' said physical impairments substantially limits one or more of the following major life activities: walking. In addition, Plaintiff's Member and Plaintiff DIANE CROSS cannot perform one or

1 more of the said major life activities in the manner, speed, and
2 duration when compared to the average person. Moreover,
3 Plaintiff's Member and Plaintiff DIANE CROSS has a history of or
4 has been classified as having a physical impairment as required by
5 42 U.S.C. § 12102(2)(A).
6

7 CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In
8 Such A Manner That The Altered Portions Of The Facility Are
9 Readily Accessible And Usable By Individuals With Disabilities

10 28. Based on the facts plead at ¶¶ 12 - 22 above and elsewhere in
11 this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was
12 denied full and equal access to Defendants' goods, services,
13 facilities, privileges, advantages, or accommodations within a
14 public accommodation owned, leased, and/or operated by Defendants.
15 Defendants altered their facility in a manner that affects or
16 could affect the usability of the facility or a part of the
17 facility after January 26, 1992. In performing the alteration,
18 Defendants failed to make the alteration in such a manner that, to
19 the maximum extent feasible, the altered portions of the facility
20 are readily accessible to and usable by individuals with
21 disabilities, including individuals who use wheelchairs, in
22 violation of 42 U.S.C. §12183(a)(2).
23

24 29. Additionally, the Defendants undertook an alteration that
25 affects or could affect the usability of or access to an area of
26 the facility containing a primary function after January 26, 1992.
27 Defendants further failed to make the alterations in such a manner
28 that, to the maximum extent feasible, are readily accessible to

1 and usable by individuals with disabilities in violation 42 U.S.C.
2 §12183(a)(2).

3 30. Pursuant to 42 U.S.C. §12183(a), this failure to make the
4 alterations in a manner that, to the maximum extent feasible, are
5 readily accessible to and usable by individuals with disabilities
6 constitutes discrimination for purposes of 42 U.S.C. §12183(a).

7 Therefore, Defendants discriminated against Plaintiffs in
8 violation of 42 U.S.C. § 12182(a).

9 31. Thus, Plaintiff's Member and Plaintiff DIANE CROSS was
10 subjected to discrimination in violation of 42 U.S.C. § 12183(a),
11 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because Plaintiff's
12 Member and Plaintiff DIANE CROSS was denied equal access to
13 Defendants' existing facilities.

14
15 CLAIM III AGAINST ALL DEFENDANTS: **Failure To Remove Architectural**
16 **Barriers**

17 32. Based on the facts plead at ¶¶ 12 - 22 above and elsewhere in
18 this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was
19 denied full and equal access to Defendants' goods, services,
20 facilities, privileges, advantages, or accommodations within a
21 public accommodation owned, leased, and/or operated by Defendants.

22 Defendants failed to remove barriers as required by 42 U.S.C. §
23 12182(a). Plaintiffs are informed, believe, and thus allege that
24 architectural barriers which are structural in nature exist within
25 the physical elements of Defendants' facilities. Title III
26 requires places of public accommodation to remove architectural
27 barriers that are structural in nature to existing facilities.
28

1 [See, 42 United States Code 12182(b)(2)(A)(iv).] Failure to
2 remove such barriers and disparate treatment against a person who
3 has a known association with a person with a disability are forms
4 of discrimination. [See 42 United States Code
5 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member and Plaintiff DIANE
6 CROSS was subjected to discrimination in violation of 42 United
7 States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because they
8 were denied equal access to Defendants' existing facilities.
9

10 CLAIM IV AGAINST ALL DEFENDANTS: **Failure To Modify Practices,**
11 **Policies And Procedures**

12 33. Based on the facts plead at ¶¶ 12 - 22 above and elsewhere in
13 this complaint, Defendants failed and refused to provide a
14 reasonable alternative by modifying its practices, policies and
15 procedures in that they failed to have a scheme, plan, or design
16 to assist Plaintiffs and/or others similarly situated in entering
17 and utilizing Defendants' services, as required by 42 U.S.C. §
18 12188(a). Thus, Plaintiff's Member and Plaintiff DIANE CROSS was
19 subjected to discrimination in violation of 42 United States Code
20 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
21 Member and Plaintiff DIANE CROSS was denied equal access to
22 Defendants' existing facilities.

23 34. Based on the facts plead at ¶¶ 12 - 22 above, Claims I, II,
24 and III of Plaintiff's First Cause Of Action above, and the facts
25 elsewhere herein this complaint, Plaintiffs will suffer
26 irreparable harm unless Defendants are ordered to remove
27 architectural, non-architectural, and communication barriers at
28

Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiffs and a substantial segment of the disability community. Plaintiffs allege there is a national public interest in requiring accessibility in places of public accommodation. Plaintiffs have no adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiffs desire to return to Defendants' places of business in the immediate future. Accordingly, the Plaintiffs allege that a structural or mandatory injunction is necessary to enjoin compliance with federal civil rights laws enacted for the benefit of individuals with disabilities.

35. WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth.

SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - **CLAIMS UNDER CALIFORNIA ACCESSIBILITY LAWS**

CLAIM I: **Denial Of Full And Equal Access**

36. Based on the facts plead at ¶¶ 12 - 22 above and elsewhere in this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities.

37. These violations denied Plaintiff's Member and Plaintiff

1 DIANE CROSS full and equal access to Defendants' facility. Thus,
2 Plaintiff's Member and Plaintiff DIANE CROSS was subjected to
3 discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because
4 Plaintiff's Member and Plaintiff DIANE CROSS was denied full,
5 equal and safe access to Defendants' facility, causing severe
6 emotional distress.

7
8 CLAIM II: **Failure To Modify Practices, Policies And Procedures**

9 38. Based on the facts plead at ¶¶ 12 - 22 above and elsewhere
10 herein this complaint, Defendants failed and refused to provide a
11 reasonable alternative by modifying its practices, policies, and
12 procedures in that they failed to have a scheme, plan, or design
13 to assist Plaintiffs and/or others similarly situated in entering
14 and utilizing Defendants' services as required by Civil Code §
15 54.1. Thus, Plaintiff's Member and Plaintiff DIANE CROSS was
16 subjected to discrimination in violation of Civil Code § 54.1.

17 CLAIM III: **Violation Of The Unruh Act**

18 39. Based on the facts plead at ¶¶ 12 - 22 above and elsewhere
19 herein this complaint and because Defendants violated the Civil
20 Code § 51 by failing to comply with 42 United States Code §
21 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
22 continue to discriminate against Plaintiffs and persons similarly
23 situated in violation of Civil Code §§ 51, 52, and 54.1.

24 40. Based on the facts plead at ¶¶ 12 - 22 above, Claims I, II,
25 and III of Plaintiffs' Second Cause Of Action above, and the facts
26 elsewhere herein this complaint, Plaintiffs will suffer
27 irreparable harm unless Defendants are ordered to remove
28

1 architectural, non-architectural, and communication barriers at
2 Defendants' public accommodation. Plaintiffs allege that
3 Defendants' discriminatory conduct is capable of repetition, and
4 this discriminatory repetition adversely impacts Plaintiffs and a
5 substantial segment of the disability community. Plaintiffs
6 allege there is a state and national public interest in requiring
7 accessibility in places of public accommodation. Plaintiffs have
8 no adequate remedy at law to redress the discriminatory conduct of
9 Defendants. Plaintiffs desire to return to Defendants' places of
10 business in the immediate future. Accordingly, the Plaintiffs
11 allege that a structural or mandatory injunction is necessary to
12 enjoin compliance with state civil rights laws enacted for the
13 benefit of individuals with disabilities.

14 41. Wherefore, Plaintiffs pray for damages and relief as
15 hereinafter stated.
16

17 **Treble Damages Pursuant To Claims I, II, III Under The California**
18 **Accessibility Laws**

19 42. Defendants, each of them respectively, at times prior to and
20 including, the month of January of 2007, and continuing to the
21 present time, knew that persons with physical disabilities were
22 denied their rights of equal access to all portions of this public
23 facility. Despite such knowledge, Defendants, and each of them,
24 failed and refused to take steps to comply with the applicable
25 access statutes; and despite knowledge of the resulting problems
26 and denial of civil rights thereby suffered by Plaintiffs and
27 other similarly situated persons with disabilities. Defendants,
28

1 and each of them, have failed and refused to take action to grant
2 full and equal access to persons with physical disabilities in the
3 respects complained of hereinabove. Defendants, and each of them,
4 have carried out a course of conduct of refusing to respond to, or
5 correct complaints about, denial of disabled access and have
6 refused to comply with their legal obligations to make Defendants'
7 public accommodation facilities accessible pursuant to the
8 Americans With Disability Act Access Guidelines (ADAAG) and Title
9 24 of the California Code of Regulations (also known as the
10 California Building Code). Such actions and continuing course of
11 conduct by Defendants, and each of them, evidence despicable
12 conduct in conscious disregard of the rights and/or safety of
13 Plaintiffs and of other similarly situated persons, justifying an
14 award of treble damages pursuant to sections 52(a) and 54.3(a) of
15 the California Civil Code.

16 43. Defendants, and each of their actions have also been
17 oppressive to persons with physical disabilities and of other
18 members of the public, and have evidenced actual or implied
19 malicious intent toward those members of the public, such as
20 Plaintiffs and other persons with physical disabilities who have
21 been denied the proper access to which they are entitled by law.
22 Further, Defendants, and each of their, refusals on a day-to-day
23 basis to correct these problems evidence despicable conduct in
24 conscious disregard for the rights of Plaintiffs and other members
25 of the public with physical disabilities.

26 44. Plaintiffs pray for an award of treble damages against
27 Defendants, and each of them, pursuant to California Civil Code
28

1 sections 52(a) and 54.3(a), in an amount sufficient to make a more
2 profound example of Defendants and encourage owners,
3 lessors/lessees, and operators of other public facilities from
4 willful disregard of the rights of persons with disabilities.
5 Plaintiffs do not know the financial worth of Defendants, or the
6 amount of damages sufficient to accomplish the public purposes of
7 section 52(a) of the California Civil Code and section 54.3 of the
8 California Civil Code.

9 45. Wherefore, Plaintiffs pray for damages and relief as
10 hereinafter stated.
11

12 **DEMAND FOR JUDGMENT FOR RELIEF:**

13 A. For general damages pursuant to Cal. Civil Code §§ 52 or
14 54.3;

15 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
16 each and every offense of Civil Code § 51, Title 24 of the
17 California Building Code, ADA, and ADA Accessibility Guidelines;

18 C. In the alternative to the damages pursuant to Cal. Civil Code
19 § 52 in Paragraph B above, for \$1,000 in damages pursuant to Cal.
20 Civil Code § 54.3 for each and every offense of Civil Code § 54.1,
21 Title 24 of the California Building Code, ADA, and ADA
22 Accessibility Guidelines;

23 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a).
24 Plaintiffs request this Court enjoin Defendants to remove all
25 architectural barriers in, at, or on their facilities;

26 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. §
27 12205, and Cal. Code of Civil Procedure §§ 1032 and 1033.5;
28

1 F. For treble damages pursuant to Cal. Civil Code §§ 52(a) or
2 54.3(a);

3 G. A Jury Trial and;


4 H. For such other further relief as the court deems proper.
5

6 Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

7
8 Dated: January 8, 2008

9 By:


THEODORE A. PINNOCK, ESQ.
DAVID C. WAKEFIELD, ESQ.
MICHELLE L. WAKEFIELD, ESQ.
Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF
DIANE CROSS; and DIANE CROSS, An Individual,
Plaintiffs,

(b) COUNTY OF RESIDENCE OF FIRST LISTED
PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

ROSS DRESS FOR LESS, INC. d.b.a. **FILED** ROSS DRESS FOR LESS
#478; MANNA DEVELOPMENT GROUP, LLC d.b.a. PANERA
BREAD #4279; MIRA MESA MARK **08 JAN - 8 PM 2:16** BASKIN ICG AND
DOES 1 THROUGH 10, Inclusive

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED San Diego **DEPUTY**

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Michelle L. Wakefield, Esq. SBN: 200424
Theodore A. Pinnock, Esq. SBN: 153434
PINNOCK & WAKEFIELD, A.P.C.
3033 Fifth Ave., Suite 410, San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

'08 CV 0045 BTM CAB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX)

(For Diversity Cases Only)

FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

- | | | |
|---|---|---|
| | PT DEF | PT DEF |
| Citizen of This State | <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Electmant <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER f.r.e.p. 23

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE January 8, 2008

SIGNATURE OF ATTORNEY OF RECORD

PAID \$350 1/8/08 BY RPT# 146223

Michelle L. Wakefield

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

146223 - BH
* * C O P Y * *
January 08, 2008
14:15:02

Civ Fil Non-Pris
USAO #: 08CV0045 CIVIL FILING
Judge.: BARRY T MOSKOWITZ
Amount.: \$350.00 CC

Total-> \$350.00

FROM: OUTERBRIDGE V. ROSS ET AL
CIVIL FILING
VISA AUTH# 014125